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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/824,167	10/18/2004	Rhonda Michelle Clevenger		6365

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EXAMINER	
TYSON, MELANIE RUANO	
ART UNIT	PAPER NUMBER
3731	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/12/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	10/824,167	CLEVENGER, RHONDA MICHELLE	
	Examiner	Art Unit	
	Melanie Tyson	3731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *18 October 2004*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-6* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-6* is/are rejected.

7)☒ Claim(s) *3* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *18 October 2004* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Specification

1. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

The abstract of the disclosure is objected to because it contains legal phraseology (comprises, line 9). Correction is required. See MPEP § 608.01(b).

Claim Objections

2. Claim 3 objected to because of the following informalities: it contains typographical errors. Replace "linier" with --linear--, and place the terms --handling-- and --mechanism-- between the terms "said" and "is." Appropriate correction is required.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Begun

(Publication No. 2001/0001828 A1). Begun discloses an appliance for ear cleaning (Figure 10) comprising a long stem (96), two cleaning heads (98 and 100), safety wands (97 and 101), and a handling mechanism (97) fabricated out of polymer material (polyethylene, paragraph 53).

Claim 1 is being treated as product by process limitation, in that "using an injection molding process" refers to the process of making the handling mechanism and not to the final product created. As set forth in MPEP 2113, "Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product in the prior art, the claim is unpatentable even though the prior product was made by a different process." In re Thorpe, 777 F.2d 695,698,227 USPQ 964,966 (Fed. Cir. 1985). Examiner has evaluated the product claim without giving much weight to the method of its manufacture. Therefore, in this case, a handling mechanism fabricated using the injection molding process is directed to the method of making the handling mechanism and not to the final product made. It appears that the product disclosed by Begun would be the same or similar as that claimed; especially since both applicant's product and the prior art product have the same final structure of a handling mechanism for rotating the stem fabricated out of a polymer material.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 2, 3, 4, and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Begun. With respect to claims 2, 4, and 6, Begun does not disclose the specific length of the stem, the distance between safety wands, and the length and width of the handling mechanism. Figure 10 shows all of the components claimed including a stem (96) having a length, a distance between two safety wands (99 and 101), and a handling mechanism (97) having a length and width. It would have been obvious to one having ordinary skill in the art at the time the invention was made to configure the device having the parameters claimed, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art.

With respect to claim 3, Begun discloses the handling mechanism is fabricated out of polyethylene (paragraph 53), however, is silent as to whether or not the polyethylene comprises a linear low density polyethylene (LLDPE). It is obvious that the polyethylene of Begun may comprise a LLDPE, since Begun discloses the device is

flexible and repeatedly bendable, yet virtually unbreakable (paragraph 14), and LLDPE is very flexible and elongates under stress.

6. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Begun in view of Condren (Patent No. 1,658,801). Begun discloses a device as described above, however, fails to disclose the cleaning heads comprise alternating rows of open rounded grasping loops and flat grasping pads. Condren discloses a cavity-cleaning device (Figures 1 and 2). Although the device is used for cleaning the nasal cavity, the device is capable of being used to clean other body cavities, such as the ear canal, if one so desired. Figure 2 shows the device comprises a handling mechanism (1) and a cleaning head (2). Condren teaches alternating rows of open rounded grasping loops (3 and 4) and flat grasping pads (9). It would have been obvious to one of ordinary skill in the art at the time the invention was made to construct the cleaning heads of Begun as taught by Condren in order to provide a means for loosening exudate (lines 34-38) and a removing exudate (lines 15-19), thus providing a device that thoroughly cleans the cavity.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melanie Tyson whose telephone number is (571) 272-9062. The examiner can normally be reached on Monday through Friday 9:00 a.m. - 5:30 p.m. EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan Nguyen can be reached on (571) 272-4963. The fax phone

number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Melanie Tyson MT
March 7, 2007

ANHTUAN T. NGUYEN
SUPERVISORY PATENT EXAMINER
3/9/07.